

**United States Department of Labor
Employees' Compensation Appeals Board**

R.W., Appellant

and

**DEPARTMENT OF THE NAVY, MILITARY
SEALIFT COMMAND, Norfolk, VA, Employer**

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**Docket No. 20-0843
Issued: April 20, 2021**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

JURISDICTION

On March 9, 2020 appellant filed a timely appeal from a November 27, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to establish a medical condition causally related to the accepted June 26, 2019 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On July 9, 2019 appellant, then a 56-year-old chief electrician, filed a traumatic injury claim (Form CA-1) alleging that on June 26, 2019 she experienced lower back pain when she hit her back on a ledge while in the performance of duty. She did not stop work.

In a July 10, 2019 development letter, OWCP informed appellant that the evidence submitted was insufficient to establish her claim. It advised her of the type of factual and medical evidence necessary to establish her claim and provided a questionnaire for completion. OWCP afforded appellant 30 days to respond.

On August 1, 2019 OWCP received an incomplete development questionnaire signed by appellant on July 28, 2019, and additional medical evidence.

In a June 2, 2019 report, Dr. Patrick Shen, a Board-certified emergency medicine physician, noted a diagnosis of back sprain/strain.

In a June 12, 2019 health visit summary, Dr. Kristen Reineke-Piper, a Board-certified family medicine specialist, reported physical findings of spasm, tenderness, and pain in the lower back. She referenced a March 2018 magnetic resonance imaging (MRI) scan and diagnosed lower back pain and degenerative disc disease.

In a July 23, 2019 health visit summary form, Dr. Kristin Ramsey, an osteopath who specializes in family medicine, indicated that she was treating appellant for low back pain, degenerative disc disease, and left elbow pain. She recounted that appellant had experienced low back pain for the past nine weeks and that on June 26, 2019 appellant hit her low back and left elbow when she was climbing down a bilge well. Dr. Ramsey indicated that a lumbar x-ray scan report taken one month prior showed degenerative disc disease. She diagnosed low back pain, multi-level degenerative disc disease, and left elbow pain.

Appellant submitted physical therapy notes dated June 27 and July 23, 2019 from a provider with an illegible signature who listed the dates that appellant received physical therapy treatments.

By decision dated August 19, 2019, OWCP denied appellant's claim. It accepted that the June 26, 2019 incident occurred as alleged and that a lumbar condition had been diagnosed; however, it denied her claim, finding that the medical evidence of record was insufficient to establish causal relationship between the accepted employment incident and the diagnosed condition.

On September 24, 2019 appellant requested a review of the written record by a representative of OWCP's Branch of Hearings and Review.

In progress reports dated July 26 and August 23, 2019, Elyse E. Buttery, a nurse practitioner, recounted that appellant hurt her back, buttocks, and left elbow at work on June 26, 2019. She noted lumbar examination findings of tenderness to palpation to lumbar pain and diagnosed acute bilateral low back pain with bilateral sciatica and myofascial pain.

In an August 26, 2019 health visit summary form, Dr. Reineke-Piper recounted that appellant hit her back and elbow on June 26, 2019. She indicated that a lumbar spine x-ray scan showed degenerative changes and a left elbow x-ray scan was normal. Dr. Reineke-Piper diagnosed lower back pain and left elbow pain.

In a September 18, 2019 letter, Dr. Reineke-Piper recounted that appellant had a history of chronic back pain, which was stable. She reported that appellant sought treatment at their office on June 27, 2019 after an acute back injury when she hit her lower back and left elbow on the ledge of a bilge well when climbing out.

By decision dated November 27, 2019, an OWCP hearing representative affirmed the August 19, 2019 decision, as modified, finding that the evidence of record did not include medical evidence containing a diagnosis in connection with the accepted June 26, 2019 employment incident. Therefore, appellant had not met the requirements to establish an injury as defined by FECA.

LEGAL PRECEDENT

An employee seeking benefits under FECA² has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,³ that an injury was sustained in the performance of duty, as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, OWCP must first determine whether fact of injury has been established.⁶ There are two components involved in establishing fact of injury. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit evidence, in the form of probative medical evidence, to establish that the employment incident caused a personal injury.⁸

² *Id.*

³ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁵ *R.R.*, Docket No. 19-0048 (issued April 25, 2019); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁶ *D.B.*, Docket No. 18-1348 (issued January 4, 2019); *S.P.*, 59 ECAB 184 (2007).

⁷ *D.S.*, Docket No. 17-1422 (issued November 9, 2017); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁸ *B.M.*, Docket No. 17-0796 (issued July 5, 2018); *David Apgar*, 57 ECAB 137 (2005); *John J. Carlone*, 41 ECAB 354 (1989).

An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability or condition for which compensation is being claimed is causally related to the employment incident.⁹

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence.¹⁰ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factor(s) identified by the employee.¹¹ The weight of the medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.¹²

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 26, 2019 employment incident.

Appellant first received medical treatment after the June 26, 2019 employment incident on July 23, 2019. In a health visit summary form, Dr. Ramsey noted that appellant had experienced low back pain for the past nine weeks and described the June 26, 2019 employment incident. She indicated that a lumbar x-ray scan taken one month prior revealed degenerative disc disease. Dr. Ramsey diagnosed low back pain, multi-level degenerative disc disease, and left elbow pain. The Board has held that a medical report lacking a rationalized medical opinion regarding causal relationship is of no probative value.¹³ For this reason, Dr. Ramsey's report is insufficient to meet appellant's burden of proof.

Appellant also submitted reports and letters by Dr. Reineke-Piper dated June 12, August 26, and September 18, 2019. She reported a history of lower back pain and an acute back injury when appellant hit her lower back and left elbow when climbing out of a bilge well. On June 12, 2019 Dr. Reineke-Piper diagnosed lower back pain and degenerative disc disease. In her subsequent reports, she diagnosed lower back pain and left elbow pain. As noted above, pain is a description of a symptom, not a diagnosis of a medical condition.¹⁴ The Board has held that medical evidence which does not offer an opinion regarding the cause of an employee's condition

⁹ *T.H.*, 59 ECAB 388 (2008); *see also Roma A. Mortenson-Kindschi*, 57 ECAB 418 (2006).

¹⁰ *See S.A.*, Docket No. 18-0399 (issued October 16, 2018); *see also Robert G. Morris*, 48 ECAB 238 (1996).

¹¹ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *James Mack*, 43 ECAB 321 (1991).

¹³ *K.C.*, Docket No. 20-0683 (issued September 23, 2020); *P.C.*, Docket No. 18-0167 (issued May 7, 2019).

¹⁴ *C.S.*, Docket No. 20-1354 (issued January 29, 2021); *D.A.*, Docket No. 18-0783 (issued November 8, 2018).

is of no probative value on the issue of causal relationship.¹⁵ Accordingly, Dr. Reineke-Piper's reports are insufficient to meet appellant's burden of proof.

Dr. Shen's diagnosis of back sprain/strain in the June 2, 2019 report also fails to establish a medical diagnosis in connection with the accepted June 26, 2019 employment incident as this examination predated the accepted employment incident.

The remaining reports dated July 26 and August 23, 2019 are from a nurse practitioner. Nurse practitioners are not considered physicians as defined under FECA.¹⁶ Consequently, their medical findings and/or opinions will not suffice for purposes of establishing entitlement to FECA benefits.¹⁷

As there is no evidence of record from a qualified physician that establishes a diagnosed medical condition causally related to the accepted June 26, 2019 employment incident, the Board finds that appellant has not met her burden of proof.¹⁸

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a medical condition causally related to the accepted June 26, 2019 employment incident.

¹⁵ See *C.W.*, Docket No. 20-0965 (issued February 5, 2021); *B.H.*, Docket No. 20-0777 (issued October 21, 2020); *T.H.*, Docket No. 18-1736 (issued March 13, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹⁶ Section 8101(2) provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law." See 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See also Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA); *R.L.*, Docket No. 19-0440 (issued July 8, 2019) (nurse practitioners and physical therapists are not considered physicians under FECA).

¹⁷ *B.W.*, Docket No. 20-1032 (issued November 17, 2020).

¹⁸ See *K.G.*, Docket No. 20-1242 (issued January 13, 2021).

ORDER

IT IS HEREBY ORDERED THAT the November 27, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 20, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board